

security investigation. These communications and records can be of people who are U.S. citizens who are not suspected of being agents of a foreign power or terrorists. These communications and records can be demanded without any court review or any court approval. Worse yet, the target of the NSL will never know that his communications and records were inspected by government agents because the company, the financial agent, the service provider, the bank is barred by law from telling him or anyone else of the demand. And as we know from the FBI inspector general's audit, this broad discretion has been abused by the FBI, whose agents may have violated either the law or internal rules more than 1,000 times while misusing the authority to issue National Security Letters.

This recent IG report heightens the clear need for more adequate checks on the FBI's investigatory powers with respect to NSLs. The FBI has far-reaching compulsory powers to obtain documents in terrorism investigations without NSLs. In criminal investigations the FBI can obtain a search warrant if there is a judicial finding of probable cause or a grand jury subpoena issued under the supervision of a judge and a U.S. attorney. And in international terrorism cases, the FBI has sweeping authority to obtain records under section 215 of the PATRIOT Act, all this separate from NSLs.

I intend to introduce this week, with Congressman FLAKE, the National Security Letters Reform Act of 2007 to address more fully the issues presented by section 505 of the National Security Letters.

The bill would restore a pre-PATRIOT Act requirement that the FBI make a factual, individualized showing that the records sought pertain to a suspected terrorist or spy. It also gives the recipient of a National Security Letter an opportunity to obtain legal counsel. It thus preserves the constitutional right to their day in court.

Already courts have found part of the NSL authority to be too broad and unconstitutional. The provisions that state that NSL recipients are forbidden from disclosing the demand to the targeted individual and are forbidden even from consulting with an attorney have already been struck down. Another court found the NSL authority to be unconstitutional on its face because it violates the fourth amendment's protection against unreasonable searches and seizures.

The National Security Letters Reform Act of 2007 would allow the FBI to continue issuing National Security Letters by correcting the constitutional deficiencies in the law. This bill would enable the FBI to obtain documents that it legitimately needs, while protecting the privacy of law-abiding American citizens.

I ask that my colleagues vote for this amendment so that we can protect the privacy of U.S. persons who are not

terrorists or agents of terrorists before we provide funding for those broad and sweeping powers provided under the PATRIOT Act.

I urge my colleagues to vote for this amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. Does the gentleman from New Jersey continue to reserve his point of order?

Mr. FRELINGHUYSEN. Yes, I do insist on my point of order, Mr. Chairman.

Mr. MACK. Mr. Chairman, I move to strike the last word.

The Acting CHAIRMAN. The gentleman from Florida is recognized for 5 minutes.

Mr. MACK. Mr. Chairman, I rise to briefly lend my support to the conservative goal of congressional oversight.

I have heard from many individuals and business leaders about section 505. It has caused the financial services sector to work overtime in complying with the section, and it has laid the foundation for an explosion in the use of National Security Letters.

Section 505 allows the executive branch to bypass the Constitution's procedures for search warrants and grants authority that Congress has a legitimate interest and role in monitoring.

This amendment simply asks the DOJ to conduct a review of their activities and ensure that the civil liberties of law-abiding Americans are not getting swept up in the process of keeping our Nation safe.

Mr. Chairman, we all agree that protecting this country is a top priority, but alongside that should be ensuring that our freedom is not threatened along the way. The best way this body can do that is through smart and direct oversight. This amendment calls for that.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The gentleman from New Jersey continues his reservation.

The gentleman from New Jersey is recognized for 5 minutes.

Mr. FRELINGHUYSEN. Mr. Chairman, I rise in opposition to this amendment, and I reserve a point of order.

The FBI's use of National Security Letters is a very important issue. It should be addressed by authorizing committees. I would like to point out, which I know the sponsor knows, that it is his Judiciary Committee that is the authorizing committee, and I respect that, and I know he exercises a very powerful position on that committee.

This amendment requires the Department of Justice to report on its use of National Security Letters before they can issue any new National Security Letters. As we all know, the Department of Justice Inspector General released a report on the FBI's abuse of the National Security Letters in March. I hope the Judiciary Committee

has been asking the Department of Justice questions. I am sure they have. Perhaps they should even mark up a bill to reform the FBI's use of National Security Letters after they have further studied this issue if they feel the reforms made by the FBI are not sufficient to date.

Despite past abuses of National Security Letters, we know that they are an important intelligence tool. We also know that al Qaeda has reestablished its central organization, training infrastructure, and lines of global communications, and that the National Intelligence Estimate has put the United States, in the words of that estimate, "in a heightened threat environment status." Taking away this important intelligence tool, these National Security Letters, from the Department of Justice while they compile a report, given this heightened threat environment, is not prudent. The use of National Security Letters is a very important issue that should be considered carefully and not debated for a few minutes on an appropriations bill.

I urge rejection of the amendment, and I insist on my point of order.

POINT OF ORDER

The Acting CHAIRMAN. The gentleman will state his point of order.

Mr. FRELINGHUYSEN. Mr. Chairman, I make a point of order against the amendment because it proposes to change existing law and constitutes legislation on an appropriations bill and therefore violates clause 2 of rule XXI.

The rule states in pertinent part: "An amendment to a general appropriation bill shall not be made in order if changing existing law imposes additional duties."

I ask for a ruling from the Chair.

The Acting CHAIRMAN. Does the gentleman from New York wish to be heard on the point of order?

Mr. NADLER. Yes. Upon reflection upon the rules, the gentleman is quite correct in his reading of the rules, and I cannot object to his objection.

I do express the hope that in the report that the underlying bill demands that they will include the information requested by this amendment.

The Acting CHAIRMAN. The Chair is prepared to rule.

The Chair finds that this amendment imposes new duties on the Secretary to conduct a full review and deliver a report. The amendment therefore constitutes legislation in violation of clause 2 of rule XXI.

The point of order is sustained and the amendment is not in order.

Mr. SHAYS. Mr. Chairman, I move to strike the last word.

The Acting CHAIRMAN. The gentleman from Connecticut is recognized for 5 minutes.

Mr. SHAYS. Mr. Chairman, Congressman PENCE offered an amendment to the fiscal year 2008 Commerce, Justice, and Science Appropriations Act, the bill we are debating today, just an amendment before, to prohibit funds in